

PATENT
Atty Docket No. NL 021260
(79002-11)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPLICANT: JOANNES GREGORIUS BREMER EXAMINER: SAMIR M. SHAIR
SERIAL NO.: 10/537,878 ART UNIT: 2836
FILED: JUNE 7, 2005 CONFIRMATION NO.: 8410
FOR: ACTIVITY MONITORING

APPEAL BRIEF

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant herewith respectfully presents a Brief on Appeal as follows:

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1. REAL PARTY IN INTEREST

The real party in interest is the assignee of record U.S. Philips Corporation, a Delaware corporation having an office and a place of business at 1251 Avenue of the Americas, New York, NY 10020-1104.

2. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Claims 1-3 and 5-12 are currently pending in the present application, and are the claims on appeal. See, Claims Appendix.

Claims 1, 3, 5-7 and 9-11 stand finally rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,201,476 B1 to *Depeursinge et al.*

Claims 1-3 and 5-12 stand finally rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,317,304 to *Choi et al.*

Claims 1-3 and 5-12 stand finally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication 2003/014660 A1 to *Verplaetse et al.*

Claims 4 and 13 have been previously cancelled from the present application.

4. STATUS OF AMENDMENTS

Appellant filed an after final request for reconsideration under 37 C.F.R. §1.116 in response to a Final Office Action dated May 17, 2007. The request for reconsideration did not contain an amendment to pending claims 1-3 and 5-12.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

As illustrated in FIG. 1 and claimed by independent claim 1, an activity monitor 1 comprises a measurement unit 11 and a processor 12. Measurement unit 11 includes a plurality of motion sensors (not shown) operable to produce respective sensor signals indicative of motion experienced by an object the activity monitored is attached to. Processor 12 receives the sensor signals from measurement unit 11 and processes the sensor signals in accordance with a predetermined method wherein activity monitor 1 monitors and processes the sensor signals discontinuously in time and in turn. *See, U.S. Patent Application Serial No. 10/537,878* at page 2, lines 23-32; page 3, line 18 to page 4, line 10; and page 5, lines 15 and 16.

As illustrated in FIG. 3 and claimed by independent claim 9, a method of monitoring activity using a plurality of motion sensors which are operable to produce respective sensor signals indicative of motion experienced by an object. The method involves receiving the sensor signals and processing the sensor signals in accordance with a predetermined method during a step B characterized in that the sensor signals are monitored and processed discontinuously in time and in turn in view of the standby mode of step A. *See, U.S. Patent Application Serial No. 10/537,878* at page 3, line 18 to page 4, line 10; and page 6, lines 17 and 18.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

First ground of appeal is the final rejection of claims 1, 3, 5-7 and 9-11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,201,476 B1 to *Depeursinge et al.*

Second ground of appeal is the final rejection of claims 1-3 and 5-12 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,317,304 to *Choi et al.*

Third and final ground of appeal is the final rejection of claims 1-3 and 5-12 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication 2003/014660 A1 to *Verplaetse et al.*

7. ARGUMENT

A. Depeursinge

A careful review of *Depeursinge* reveals a failure by *Depeursinge* to teach a device that monitor and processes sensor signals discontinuously in time and in turn.

Generally, *Depeursinge* teaches a concurrent monitoring of motion sensor signals. Specifically, as shown in FIGS. 1 and 2, *Depeursinge* teaches three motion sensors 2a-2c having outputs that are concurrently being monitored and processed by a signal processor 6. In particular, an A/D converter 5 concurrently provides the motion signals from motion sensors 2a-2c to a processing unit 7, which in turns concurrently processes all of the motion signals whereby a processing unit 8 generates a neural signal based on all of the motion signals and a processing unit 9 generates a comparison signal based on the neural signal that enables a determination of a probability of that the motion signals are collectively indicating a fall signal. See, *Depeursinge* at column 2, line 34 to column 4, line 7.

Furthermore, the Applicant respectfully asserts that Examiner Shah's argument that it would be impossible to simultaneously/concurrently monitor the plurality of sensor signals from motion sensors 2a-2c received by processor 60 is erroneous in view of the teachings of *Depeursinge*. Specifically, "in turn" monitoring of sensors as recited in independent claims 1 and 9 encompasses an interpretation of the limitation "in turn" as a

sequential non-overlapping monitoring of the sensors (e.g., a time-division monitoring of the sensors) and *Depeursinge* fails to teach or suggest any type of sequential non-overlapping monitoring of motion sensors 2a-2c by A/D converter 5. Thus, with the two sensor embodiment taught by *Depeursinge* in FIG. 3, A/D converter 5 must have two (2) analog inputs that are converted into a digital output for a processing unit 7 wherein the digital output has a first subset of bits representative of one motion sensor (e.g., 2a) and a second subset of bits representative of the other motion sensor (e.g., 2b). The first subset of bits representative of one motion sensor (e.g., 2a) are fed to a differentiator 7a of circuit 7A and a low pass filter 7C, and the second subset of bits representative of the other motion sensor (e.g., 2b) are fed to a differentiator 7a of circuit 7B and a low pass filter 7D. This arrangement supports processor unit 8 continuous monitoring of the outputs processing unit 7 to thereby execute a behavior analysis of the motion sensors. As such, the Applicant respectfully asserts that *Depeursinge* actually teaches away from any type of sequential non-overlapping monitoring of motion sensors 2a-2c by A/D converter 5 because this would degrade the behavior analysis of the motion sensors by processor unit 8.

B. 35 U.S.C. §102(b) Depeursinge Rejection of Claims 1, 3, 5-7 and 9-11

(1) **Anticipation**. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In view of the fact that *Depeursinge* fails to teach a device that monitors and processes sensor signals discontinuously in time and in turn, the Appellant respectfully asserts *Depeursinge* fails to anticipate the following limitations of claims 1, 3, 5-7, and 9-11.

(2) **Group 1: Claims 1 and 9**. The Appellant respectfully traverse the anticipation rejection of independent claims 1 and 9, because *Depeursinge* fails to show "characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time and the processor is operable to monitor the sensor signals in turn" in as complete detail as recited in independent claim 1, and "characterized in that the sensor signals are monitored and processed discontinuously in time and the sensor signals are monitored in turn" in as complete detail as recited in

independent claim 9. Withdrawal of the rejection of independent claims 1 and 9 under 35 U.S.C. §102(b) as being anticipated by *Depeursinge* is therefore respectfully requested.

(3) Group 3: Claim 3. The Appellant respectfully traverse the anticipation rejection of dependent claim 3, because *Depeursinge* fails to show “wherein the processor is operable to monitor the sensor signals discontinuously in time” in as complete detail as recited in dependent claim 3. Withdrawal of the rejection of dependent claim 3 under 35 U.S.C. §102(b) as being anticipated by *Depeursinge* is therefore respectfully requested.

(4) Group 4: Claim 5. The Appellant respectfully traverse the anticipation rejection of dependent claim 5, because *Depeursinge* fails to show “wherein the processor is operable to enter a monitoring mode of operation in which the processor monitors the sensor signals and to enter a standby mode of operation in which no monitoring takes place” in as complete detail as recited in dependent claim 5. Withdrawal of the rejection of dependent claim 5 under 35 U.S.C. §102(b) as being anticipated by *Depeursinge* is therefore respectfully requested.

(5) Group 5: Claims 6 and 10. The Appellant respectfully traverse the anticipation rejection of dependent claims 6 and 10, because *Depeursinge* fails to show “wherein the processor is operable to enter the monitoring mode and the standby mode”

alternately” in as complete detail as recited in dependent claim 6 and “alternately monitoring the sensor signals and operating in a standby mode, in which no monitoring takes place, for respective time periods” in as complete detail as recited in dependent claim 10. Withdrawal of the rejection of dependent claims 6 and 10 under 35 U.S.C. §102(b) as being anticipated by *Depeursinge* is therefore respectfully requested.

(6) Group 6: Claims 7 and 11. The Appellant respectfully traverse the anticipation rejection of dependent claims 7 and 11, because *Depeursinge* fails to show “wherein respective time periods for the monitoring and standby modes are variable” in as complete detail as recited in dependent claim 7 and “wherein the respective time periods are variable” in as complete detail as recited in dependent claim 11. Withdrawal of the rejection of dependent claims 7 and 11 under 35 U.S.C. §102(b) as being anticipated by *Depeursinge* is therefore respectfully requested.

C. Choi

A careful review of *Choi* reveals a failure by *Choi* to teach a device that monitor and processes sensor signals discontinuously in time and in turn.

Generally, a proper understanding of *Choi* reveals the fact that *Choi* teaches a concurrent monitoring of sensor signals. Specifically, as shown in FIGS. 5 and 6, *Choi* is

premised on the concept of a trigger capturing circuit 23 concurrently receiving motion signals from a tamper switch 21 and a motion sensor 22 in a continuous manner to thereby trigger an activation of a microprocessor 24 upon either signal indicating motion. See, Choi at column 4, line 15 to column 6, line 62.

Furthermore, the Applicant respectfully asserts that Examiner Shah's argument that it would the stand-by/active modes of microprocessor 24 implies that motion signals from tamper switch 21 and motion sensor 22 are not continuously generated and thus, microprocessor inevitably monitors the sensor signals in turn is erroneous in view of the teachings of *Choi*. First, *Choi* teaches trigger capture circuit 23 as the component for monitoring tamper switch 21 and motion sensor 22 to thereby be able to transition microprocessor 24 from a standby mode to an active mode as needed based on the monitoring of tamper switch 21 and motion sensor 22. Second, *Choi* teaches tamper switch 21 will generate a signal or pulse when its status changes within the circuit and similarly, motion sensor 22 will generate a signal or pulse when its status changes within the circuit. As such, it is imperative for trigger capturing circuit 23 to continually monitor both tamper switch 21 and motion sensor 22 in concurrence to thereby prevent trigger capturing circuit 23 from failing to capture any generated signal or pulse by tamper switch 21 and/or motion sensor 22.

In fact, the Applicant respectfully asserts that the "in turn" monitoring of sensors as recited in independent claims 1 and 9 encompasses an interpretation of the limitation "in turn" as a sequential non-overlapping monitoring of the sensors (e.g., a time-division

monitoring of the sensors) and *Choi* teaches away from any type of sequential non-overlapping monitoring of tamper switch 21 and motion sensor 22 because *Choi* teaches that trigger capturing circuit 23 must monitor the duration, frequency and intensity of each signal/pulse and the time duration between each signal/pulse. Thus, any sequential non-overlapping monitoring of monitoring tamper switch 21 by trigger capturing circuit 23 would impede the capturing by trigger capturing circuit 23 of the duration, frequency and intensity of each signal/pulse from tamper switch 21 and the time duration between each signal/pulse of tamper switch 21. The same is true for motion sensor 22.

D. 35 U.S.C. §102(b) Choi Rejection of Claims 1-3 and 5-12

(1) **Anticipation**. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In view of the fact that *Choi* fails to teach a device that monitors and processes sensor signals discontinuously in time and in turn, the Appellant respectfully asserts *Choi* fails to anticipate the following limitations of claims 1, 3, 5-7, and 9-12.

(2) Group 1: Claims 1 and 9. The Appellant respectfully traverse the anticipation rejection of independent claims 1 and 9, because *Choi* fails to show “characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time and the processor is operable to monitor the sensor signals in turn” in as complete detail as recited in independent claim 1, and “characterized in that the sensor signals are monitored and processed discontinuously in time and the sensor signals are monitored in turn” in as complete detail as recited in independent claim 9. Withdrawal of the rejection of independent claims 1 and 9 under 35 U.S.C. §102(b) as being anticipated by *Choi* is therefore respectfully requested.

(3) Group 2: Claim 2. The Appellant respectfully traverse the anticipation rejection of dependent claim 2, because *Choi* fails to show “wherein the measurement unit is operable to output the sensor signals discontinuously in time” in as complete detail as recited in independent claim 2. Withdrawal of the rejection of dependent claim 2 under 35 U.S.C. §102(b) as being anticipated by *Choi* is therefore respectfully requested.

(4) Group 3: Claim 3. The Appellant respectfully traverse the anticipation rejection of dependent claim 3, because *Choi* fails to show “wherein the processor is operable to monitor the sensor signals discontinuously in time” in as

complete detail as recited in dependent claim 3. Withdrawal of the rejection of dependent claim 3 under 35 U.S.C. §102(b) as being anticipated by *Choi* is therefore respectfully requested.

(5) Group 4: Claim 5. The Appellant respectfully traverse the anticipation rejection of dependent claim 5, because *Choi* fails to show “wherein the processor is operable to enter a monitoring mode of operation in which the processor monitors the sensor signals and to enter a standby mode of operation in which no monitoring takes place” in as complete detail as recited in dependent claim 5. Withdrawal of the rejection of dependent claim 5 under 35 U.S.C. §102(b) as being anticipated by *Choi* is therefore respectfully requested.

(6) Group 5: Claims 6 and 10. The Appellant respectfully traverse the anticipation rejection of dependent claims 6 and 10, because *Choi* fails to show “wherein the processor is operable to enter the monitoring mode and the standby mode alternately” in as complete detail as recited in dependent claim 6 and “alternately monitoring the sensor signals and operating in a standby mode, in which no monitoring takes place, for respective time periods” in as complete detail as recited in dependent claim 10. Withdrawal of the rejection of dependent claims 6 and 10 under 35 U.S.C. §102(b) as being anticipated by *Choi* is therefore respectfully requested.

(7) **Group 6: Claims 7 and 11.** The Appellant respectfully traverse the anticipation rejection of dependent claims 7 and 11, because *Choi* teaches away from “wherein respective time periods for the monitoring and standby modes are variable” in as complete detail as recited in dependent claim 7 and “wherein the respective time periods are variable” in as complete detail as recited in dependent claim 11. Withdrawal of the rejection of dependent claims 7 and 11 under 35 U.S.C. §102(b) as being anticipated by *Choi* is therefore respectfully requested.

(8) **Group 7: Claims 8 and 12.** The Appellant respectfully traverse the anticipation rejection of dependent claims 8 and 12, because *Choi* fails to show “wherein respective time periods for the monitoring and standby modes are fixed” as in as complete detail recited in dependent claim 8 and “wherein the respective time periods are fixed” in as complete detail as recited in dependent claim 12. Withdrawal of the rejection of dependent claims 8 and 12 under 35 U.S.C. §102(b) as being anticipated by *Choi* is therefore respectfully requested.

E. Verplaetse

A careful review of *Verplaetse* reveals a failure by *Verplaetse* to teach a device that monitor and processes sensor signals discontinuously in time and in turn.

Generally, a proper understanding of *Verplaetse* reveals the fact that *Verplaetse* teaches a concurrent monitoring of motion sensor signals. Specifically, as best shown in FIG. 5D, *Verplaetse* teaches an accelerometer having two motion sensor outputs 6 and 7 coupled via respective op-amps buffers 280 and 282 to A/D ports of microcontroller 38. See, *Verplaetse* at paragraph [0045].

Furthermore, the Applicant respectfully traverses Examiner Shah's argument that that fact that accelerometer 36 does not produce sensor signals continuously in time implies that microcontroller 38 monitors sensor outputs 6 and 7 via respective op-amps buffers 280 and 282 in turn when a successive signal is produced after accelerometer 36 has been powered down in erroneous in view of the teachings of *Verplaetse* and interpretation of "in turn" as recited in the claims. First, monitoring signals "in turn" as recited in independent claims 1 and 9 encompasses an interpretation of the limitation "in turn" as a sequential non-overlapping monitoring of the sensors (e.g., a time-division monitoring of the sensors). For example, time would be divided into time periods with a first signal being monitored during odd time periods and a second signal being monitored during even time periods.

Second, upon being powered up, *Verplaetse* fails to teach or suggest accelerometer 36 outputting signals 6 and 7 based on any type of sequential non-overlapping monitoring and also fails to teach or suggest microcontroller 38 inputting signals 6 and 7 based on any type of sequential non-overlapping monitoring. In fact, *Verplaetse* teaches away from accelerometer 36 outputting signals 6 and 7 based on any

type of sequential non-overlapping monitoring and microcontroller 38 inputting signals 6 and 7 based on any type of sequential non-overlapping monitoring because is it imperative microcontroller 38 continually monitor signals 6 and 7 in concurrence to thereby be able to determine if any unauthorized movement has occurred under the principles of *Verplaetse*.

F. 35 U.S.C. §103(a) Verplaetse Rejection of Claims 1-3 and 5-12

(1) **Obviousness**. Obviousness must be determined based on the following three factors. First, the scope and content of the prior art must be determined. Second, any differences between the claimed invention and the prior art must be ascertained. Finally, a level of ordinary skill in the pertinent art must be resolved.

In view of the fact that any modification of *Verplaetse* to teach a device that monitors and processes sensor signals discontinuously in time and in turn or the like improperly changes the principle operation of *Verplaetse*, the Appellant respectfully asserts *Verplaetse* teaches away from the following limitations of claims 1-3 and 5-12:

(2) Group 1: Claims 1 and 9. The Appellant respectfully traverse the obviousness rejection of independent claims 1 and 9, because *Verplaetse* teaches away from “characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time and the processor is operable to monitor the sensor signals in turn” as recited in independent claim 1, and “characterized in that the sensor signals are monitored and processed discontinuously in time and the sensor signals are monitored in turn” as recited in independent claim 9. Withdrawal of the rejection of independent claims 1 and 9 under 35 U.S.C. §103(a) as being unpatentable over *Verplaetse* is therefore respectfully requested.

(3) Group 2: Claim 2. The Appellant respectfully traverses the obviousness rejection of dependent claim 2, because *Choi* teaches away from “wherein the measurement unit is operable to output the sensor signals discontinuously in time” as recited in dependent claim 2. Withdrawal of the rejection of dependent claim 2 under 35 U.S.C. §103(a) as being unpatentable over *Verplaetse* is therefore respectfully requested.

(4) Group 3: Claim 3. The Appellant respectfully traverses the obviousness rejection of dependent claim 3, because *Verplaetse* teaches away from “wherein the processor is operable to monitor the sensor signals discontinuously in time” as recited in dependent claim 3. Withdrawal of the rejection of dependent claim 3 under

35 U.S.C. §103(a) as being unpatentable over *Verplaetse* is therefore respectfully requested.

(5) Group 4: Claim 5. The Appellant respectfully traverse the obviousness rejection of dependent claim 5, because *Verplaetse* teaches away from “wherein the processor is operable to enter a monitoring mode of operation in which the processor monitors the sensor signals and to enter a standby mode of operation in which no monitoring takes place” as recited in dependent claim 5. Withdrawal of the rejection of dependent claim 5 under 35 U.S.C. §103(a) as being unpatentable over *Verplaetse* is therefore respectfully requested.

(6) Group 5: Claims 6 and 10. The Appellant respectfully traverse the obviousness rejection of dependent claims 6 and 10, because *Verplaetse* teaches away from “wherein the processor is operable to enter the monitoring mode and the standby mode alternately” as recited in dependent claim 6 and “alternately monitoring the sensor signals and operating in a standby mode, in which no monitoring takes place, for respective time periods” as recited in dependent claim 10. Withdrawal of the rejection of dependent claims 6 and 10 under 35 U.S.C. §103(a) as being unpatentable over *Verplaetse* is therefore respectfully requested.

(7) Group 6: Claims 7 and 11. The Appellant respectfully traverse the obviousness rejection of dependent claims 7 and 11, because *Verplaetse* teaches away from “wherein respective time periods for the monitoring and standby modes are variable” as recited in dependent claim 7 and “wherein the respective time periods are variable” as recited in dependent claim 11. Withdrawal of the rejection of dependent claims 7 and 11 under 35 U.S.C. §103(a) as being unpatentable over *Verplaetse* is therefore respectfully requested.

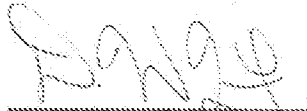
(8) Group 7: Claims 8 and 12. The Appellant respectfully traverse the obviousness rejection of dependent claims 8 and 12, because *Verplaetse* teaches away from “wherein respective time periods for the monitoring and standby modes are fixed” as recited in dependent claim 8 and “wherein the respective time periods are fixed” as recited in dependent claim 12. Withdrawal of the rejection of dependent claims 8 and 12 under 35 U.S.C. §103(a) as being unpatentable over *Verplaetse* is therefore respectfully requested.

Dated: October 15, 2007

Respectfully submitted,

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CLAIMS APPENDIX

1. An activity monitor comprising:

a measurement unit including a plurality of motion sensors operable to produce respective sensor signals indicative of motion experienced thereby; and

a processor operable to receive the sensor signals from the measurement unit and to process the sensor signals in accordance with a predetermined method,

characterized in that the activity monitor is operable to monitor and process the sensor signals discontinuously in time and the processor is operable to monitor the sensor signals in turn.
2. An activity monitor as claimed in claim 1, wherein the measurement unit is operable to output the sensor signals discontinuously in time.
3. An activity monitor as claimed in claim 1, wherein the processor is operable to monitor the sensor signals discontinuously in time.
5. An activity monitor as claimed in claim 1, wherein the processor is operable to enter a monitoring mode of operation in which the processor monitors the sensor signals and to enter a standby mode of operation in which no monitoring takes place.

6. An activity monitor as claimed in claim 5, wherein the processor is operable to enter the monitoring mode and the standby mode alternately.
7. An activity monitor as claimed in claim 6, wherein respective time periods for the monitoring and standby modes are variable.
8. An activity monitor as claimed in claim 6, wherein respective time periods for the monitoring and standby modes are fixed.
9. A method of monitoring activity using a plurality of motion sensors which are operable to produce respective sensor signals indicative of motion experienced thereby, the method comprising receiving the sensor signals and processing the sensor signals in accordance with a predetermined method, characterized in that the sensor signals are monitored and processed discontinuously in time and the sensor signals are monitored in turn.
10. A method as claimed in claim 9, comprising alternately monitoring the sensor signals and operating in a standby mode, in which no monitoring takes place, for respective time periods.

11. A method as claimed in claim 10, wherein the respective time periods are variable.
12. A method as claimed in claim 10, wherein the respective time periods are fixed.

EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.